STATE OF MICHIGAN

COURT OF APPEALS

CHELSEA AREA FIRE AUTHORITY, Plaintiff-Appellant,	UNPUBLISHED January 10, 2006
v	No. 255932 Washtenaw Circuit Court
ERIC GROVE, Defendant-Appellee.	LC No. 01-000949-AV

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's order affirming the district court's order granting summary disposition to defendant. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was incorporated in 1999 to provide fire and other emergency services to four municipalities, and to collect funds to cover its costs.[1] Before then, some of the same municipalities, including Lyndon and Sylvan Townships, provided and funded emergency services through a contractual arrangement known as the Chelsea 911 Compact.

Defendant was involved in a car accident in 2000, in Sylvan Township. Plaintiff provided services to defendant, by way of the Chelsea Fire Department, and billed him for $720, calculated as a fixed fee of $670 for the type of service involved, plus a $50 administrative fee. Defendant refused to pay the fee charged, causing plaintiff to file suit in small claims court.

Defendant removed the case to the district court, and moved for summary disposition on the ground that a district court had previously decided that plaintiff's methodology in calculating fees charged to recipients of its services was not reasonable. The case in question, *Lyndon Twp v Kapp*, LC No. 98-009803-AV, involved the township's attempt to collect from two recipients of emergency services. In that case, the district court stated that "the cost of having the presence and availability of both a fire department and reliable firefighters . . . should be borne by the

[1] MCL 41.806a authorizes "municipalities acting jointly" to provide emergency services to "authorize by ordinance the collection of fees for the service."

taxpayers as a whole rather than individual recipients of the benefit," then awarded fees on the basis of personnel hours actually expended multiplied by the hourly wages of the workers involved. The district court in this case agreed that *Kapp, supra*, should govern the instant controversy, and granted summary disposition. The circuit court affirmed.

The sole issue on which we granted leave to appeal is whether the circuit court erred in upholding the district court's conclusion that defendant was entitled to summary disposition on the ground that the reasoning in *Kapp, supra*, applied to this case as well through the doctrine of collateral estoppel.

The applicability of collateral estoppel is a question of law, calling for review de novo. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). That doctrine precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. See *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990); 1 Restatement Judgments, 2d, § 27, p 250. The doctrine bars relitigation of issues where the parties had a full and fair opportunity to litigate those issues in an earlier action. *Arim v General Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994).

"[W]here collateral estoppel is being asserted defensively against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required." *Monat v State Farm Ins Co*, 469 Mich 679, 680-681; 677 NW2d 843 (2004). In this case, defendant asserted collateral estoppel defensively against plaintiff's claim for fees. The question, then, is whether plaintiff has had a full and fair opportunity to vindicate its fee-charging methodology. We conclude that it did not.

Plaintiff was not incorporated until after *Kapp, supra*, was decided. The plaintiff in *Kapp, supra*, Lyndon Township, was a municipality, while plaintiff is a service-providing corporation. Plaintiff is neither a subdivision nor an agency purely of that township, but rather a cooperative involving it and other municipalities. Plaintiff is not trying to collect from defendant specifically on behalf of Lyndon Township, but is instead trying to collect directly on its own corporate behalf, and indirectly on behalf of four municipalities of which Lyndon Township happens to be one, for services rendered in another of those other municipalities. Under these facts, the linkage between Lyndon Township and plaintiff is not sufficient to establish identity of parties for purposes of collateral estoppel. That township's inclusion among plaintiff's constituent municipalities does not itself cause an earlier decision involving Lyndon Township to bind plaintiff in connection with services rendered in Sylvan Township.

Nor is it apparent that *Kapp, supra*, involved the same issue as does the instant case. That case disapproved of the methodology for calculating fees because it attempted to pass the entire costs of emergency services onto persons actually receiving services, thus failing to recognize that all persons eligible to receive such services benefited from their availability in general. In this case, however, plaintiff's business manager testified that she sent bills "from the organization itself to the municipalities for contribution towards the operating budget," along with bills "invoicing . . . fire and emergency services to service recipients." This suggests that the municipalities do contribute to plaintiff's costs generally, presumably from general revenues. The witness went on to explain that defendant was assessed a fixed fee determined in part on the

basis of the average number of personnel hours expended in rendering the kind of service involved. The use of such averaging was not at issue in *Kapp, supra*. Because *Kapp, supra*, did not clearly rule on the specific methodology here at issue, there was not sufficient identity of issues for collateral estoppel to operate.[2]

For these reasons, we conclude that the district court's 1998 decision involving Lyndon Township should bear on the instant case as nothing greater than persuasive authority.

Reversed and remanded. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood

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[2] *Kapp, supra*, was appealed to the circuit court, which remanded for further factual development, inducing the district court to articulate more precisely how Lyndon Township arrived at the hourly rate for which it billed emergency services. However, this Court dismissed that appeal for the township's failure to prosecute. *Township of Lyndon v Kapp*, unpublished order of the Court of Appeals, issued May 9, 2005 (Docket No. 259658). Those factual findings, then, were neither subjected to appellate review, nor became part of a final order. Accordingly, the district court's June 24, 1998 decision, unaccompanied by the factual findings that followed, stands as the final order from which defendant urges the application of collateral estoppel. See *Cantwell v Southfield (After Remand)*, 105 Mich App 425, 429-430; 306 NW2d 538 (1981) ("a decision is final when all appeals have been exhausted or when the time for taking an appeal has passed").